

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

RUSSELL KLEIN & SHEILA KLEIN,

Civ. No. 10-4824 (MJD/LIB)

Plaintiff,

v.

**REPORT AND
RECOMMENDATION**

CARGILL FAMILY TRUST, UNITED STATES
OF AMERICA, & KLEIN BANK,

Defendants.

This matter came before the undersigned United States Magistrate Judge upon the routine supervision of cases and upon an assignment made in accordance with 28 U.S.C. 636(b)(1)(A). It appears that this action was filed in Douglas County District Court on or around November 16, 2010. (Notice of Removal, Dkt. 1). The United States was served with a copy of the Summons and Complaint on that same date, and on December 6, 2010, it removed the action to this Court. (Id.) The Government filed its answer on December 10, 2010. The remaining Defendants did not join in that Removal, and have not, to date, filed an answer or otherwise responded to the Complaint.

On April 12, 2011, it having appeared that more than 21 days had passed since this action was removed and the Defendants Cargill Family Trust and KleinBank had not filed an answer or other responsive motion as required by Rule 81(c), the Court directed Plaintiffs as follows:

1. Notify the Defendants Cargill Family Trust and Klein Bank, that they are required to serve and file an answer or other response to the Complaint or to move for an extension of time to do so, and that an application for entry of default is required within 10 days if no response is filed;

2. To file an application for entry of default if the pleadings are not filed within 10 days of such notification; or
3. Advise the Court in writing of any good cause for any failure to comply with these directives;

Unless counsel for the Plaintiff complies with this Order within 20 days of the date of this Order, the Court may recommend that this case be dismissed, as to Defendants Cargill Family Trust and KleinBank for lack of prosecution.

(Dkt. 6, at p. 2). It has now been more than 21 days and the Defendants have not filed an answer or responsive motion, and Plaintiffs have not filed an entry of default against the Defendants KleinBank and Cargill Family Trust, nor have they advised the Court of any good cause for such failure.

As a consequence, the Court finds that Plaintiffs have failed to abide by the terms of the Court's April 12, 2011 Order. Since the Court has forewarned Plaintiffs of the potential consequences for his failure to abide by the Court's orders, the Court recommends that this action be dismissed as to Defendants Cargill Family Trust and KleinBank for failure to comply with the Court's April 12, 2011 Order, and for lack of prosecution.

Based on the foregoing and all of the files, records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

This action be dismissed against the Defendants Cargill Family Trust and KleinBank for failure to comply with the Court's Order of April 12, 2011, and for lack of prosecution.

DATED: May 16, 2011

s/Leo I. Brisbois
LEO I. BRISBOIS
United States Magistrate Judge

NOTICE

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties **by May 30, 2011** a writing that specifically identifies the portions of the Report to which objections are made and the bases for each objection. A party may respond to the objections within fourteen days of service thereof. Written submissions by any party shall comply with the applicable word limitations provided for in the Local Rules. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment from the District Court, and it is therefore not directly appealable to the Court of Appeals.